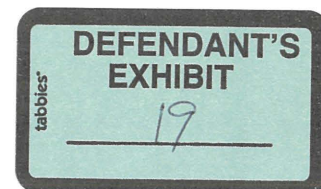




Office of the Provost

January 13, 2022

Professor Bryan Pesta
Department of Management
Monte Ahuja College of Business



Dear Dr. Pesta:

I am writing in follow-up to the report of the Cleveland State University (CSU) faculty committee charged with investigating allegations that you engaged in research misconduct in your role as a tenured, full professor in the Monte Ahuja College of Business at CSU. The work of this committee, comprised of other CSU tenured faculty members, was conducted pursuant to the University's Research Misconduct Policy (sections 3344-28-01-3344-28-10 of the Administration Code). The committee's report has been submitted to me for decision and action.

The committee based their findings on extensive review of existing correspondence and documentation, interviews with complainants as well as testimony provided by you on two separate occasions. For both of your testimonies you were provided a written transcript and given the opportunity to correct errors of fact or omission. These transcripts are included as attachments to the committee's report, as are two additional written documents from you: an opening written statement provided prior to your initial interview with the committee in September, 2021 and your written rebuttal to the draft report.

Based on the totality of the evidence gathered and the timeline of events they constructed from this evidence, this committee of your peers determined there is clear and convincing evidence that you committed four specific instances of research misconduct:

1. Unauthorized use of National Institutes of Health (NIH) controlled-access data from the database of Genotypes and Phenotypes (dbGaP);
2. Publishing research findings despite NIH explicitly stating that you and your colleagues did not have approval to do so;
3. Failure to receive IRB approval for use of NIH data that went beyond what was outlined in a Data Use Certification (DUC) Agreement; and
Unauthorized research funding for Cleveland State University (CSU)-related research efforts without CSU approval (e.g., by College Dean or Sponsored Programs and Research Services).

Additionally, and prior to this internal CSU investigation of research misconduct, the National Institutes of Health (NIH) conducted their own investigation and found that you:

- Violated the data use certification (DUC) agreement for dbGaP project #19090 by using the data to examine “intellectual ability” when the description of the research that [you] submitted suggested that you would examine mental health outcomes.
- Violated non-transferability terms for dbGaP projects #19090 and 19747 by uploading controlled data or derivatives of controlled data in the form of “coded” Single Nucleotide Polymorphisms (SNPs) to an unapproved online forensic DNA phenotyping service.
- Violated the DUC clause regarding research use reporting by not reporting the publication of Lasker J, Psych Aug. 2019, 1(1), 431-459; <https://doi.org/10.3390/psych1010034> at the time of project renewal.

As a consequence of these NIH findings, your current access to dbGaP has been revoked and you have been banned from accessing any NIH controlled access datasets for a period of three years. This is the most serious and longest ban NIH has ever issued on a controlled access dataset. When asked about your suspension, a senior NIH attorney confirmed this, stating: “*I can confirm that with the exception of Dr. Pesta’s period of suspension, NIH has not previously suspended an investigator’s access to controlled access resources on the basis of violations of the Data Use Certification Agreement and/or Data Access Request for longer than 6 months*”. The NIH has noted these sanctions and identifies both you and, by extension, Cleveland State University, as being in violation of their policies. This, of course, has serious implications for our research reputation and success as a University.

Upon learning of the outcome of the NIH investigation you appealed the NIH decision on all three counts. The NIH reviewed your appeal and upheld their decision on all three counts. Further, the NIH considers your co-author (and student, at the time) to be in continued violation of the DUC.

This matter is now before me for decision pursuant to sections 3344-28-06(K)(5) and 3344-28-10 of the Research Misconduct Policy.

Based on my review of the NIH investigation, this faculty committee’s own investigation and all the supporting documentation included in the report, including materials you provided, I concur with the committee’s findings. In arriving at this conclusion, I considered carefully your own testimony to the committee. In some parts of your testimony I note that you acknowledge committing the violation. I do not know if these violations were committed knowingly or recklessly. I do not distinguish between these two states of mind in interpreting the actions of a tenured full professor who should be well informed about appropriate research practices prior to seeking to serve as a Principal Investigator on a research project. In other parts of your testimony you provide a rationale that the violation was either overblown or it was simply not your fault. I do not find those excuses compelling and therefore find you responsible for the four violations listed above for the same reasons as the committee. I adopt and incorporate their

findings and conclusions in whole.

In considering possible sanctions, I reviewed both the AAUP Collective Bargaining Agreement and the CSU Administrative Code, Statement on Professional Ethics and Academic Responsibility. I considered carefully your assertion that this inquiry violates your academic freedom, a privilege afforded to you as a tenured full professor and a privilege that I fervently uphold. I also considered carefully the responsibilities that accompany the privilege of being a tenured faculty member.

My review of the evidence in this case weighed against our Administrative Policies and CSU-AAUP Collective Bargaining Agreement convinces me that this matter does not involve a question of academic freedom. This is a question of violating ethical conduct expectations and the standard procedures of research. You have violated the core research integrity guidelines that you agreed to follow by virtue of completing Principal Investigator (PI) training at CSU and subsequently identifying yourself as a PI on proposals for external funding. You have violated the standards of research integrity that we uphold in both our research policies and CSU's tenure standards which you, by virtue of accepting tenure at Cleveland State University, have also pledged to follow.

CSU's Administrative Code, statement on Professional Ethics and Academic Responsibility states the following (emphasis added):

The basic functions of the university are the advancement and dissemination of knowledge, the development of critical intelligence in the young, and the education of citizens and professional workers for the society of which the university is a part.

The indispensable condition for the successful discharge of these functions is an atmosphere of intellectual freedom. Unless a faculty member is free to pursue the quest for knowledge and understanding, wherever it may lead, and to report and discuss the findings, whatever they may be, the university faculty member cannot properly perform their work. It is imperative, therefore, that the university maintains an atmosphere of intellectual freedom and that faculty members uphold that freedom by their own actions.

*To make that freedom operational, it is equally imperative that the university establish democratic mechanisms for meaningful faculty participation in the governance of the institution. Freedom entails responsibilities. **It is incumbent upon the faculty member to accept the responsibilities which are concomitant with the freedom.... Those responsibilities are: to students, to scholarship, to colleagues, to the university, and to the larger community which the university serves.***

*Responsibility to scholarship: The faculty member has the responsibility of **being unfaithfully honest in research and teaching, refraining from deliberate distortion or misrepresentation and taking regular precautions against the common causes of error.***

*Responsibility to the institution: A faculty member has the duty to ensure that the **regulations of the university are designed to achieve the university's goals as well as***

being in accord with the principles of academic freedom. Recognizing the importance of order within the institution, the faculty member observes the regulations of the university, but in no way abdicates the right to attempt to reform those regulations by any appropriate orderly means.

Based on the research actions identified in this investigatory report and your rationale for them, your academically negligent relationship with your student co-author, your failure to disclose your financial relationship with the Human Phenome Diversity Foundation that both supported equipment for your CSU-affiliated research and that of your student co-author (a foundation which both you and the student direct), I conclude that you have acted with either willful dishonesty or an unacceptable level of incompetence in your scholarship. You have neglected your duties and obligations as a tenured full professor, failed to uphold the standard of excellence expected of a scholar at your faculty rank, and you have conducted your research activities in a manner that negatively impacts your reputation as a tenured full professor of Cleveland State University. By extension, your violations of research standards also negatively impact CSU's reputation as an R2 institution.

On this last point regarding harm to the institution that employs you I have included additional context here regarding two particular elements of this case that I find particularly troubling: your professional relationship with [student co-author], and nondisclosure of external funds for CSU-affiliated research purposes. In both these areas I find that you fail to understand or acknowledge the gravity of your responsibilities as a tenured full professor as it relates to the conduct of research.

Your relationship with [student co-author] and use of external funds

At several points in your testimony you respond to questions about the protected access dataset and your work with [student co-author]. Specifically, the following exchanges occur:

Committee member A (CM-A): *So, on June 24, 2021, Dr. Ward wrote to you: "your email message to Teri Kocevar dated April 18th, 2018 included the statement 'I will be the only one who has access to these data, they will be stored on my CSU computer, which is password and firewall protected.'"*

Bryan Pesta (BP): *I initially wanted to run it on the CSU laptop, provided to CSU by me, but it wasn't powerful enough, so we bought a desktop and ran it off that at my house.*

BP: *Even though I have four authors in that Lasker paper, only [student co-author] has access to confidential data".*

Committee member B (CM-B): *So, from my perspective, during our last interview when you said "unless he stole it, I didn't give him his own copy, that was the first I hear of the claim that [student co-author] never had access to the data In some of this paperwork trail....it was always the case that you felt [student co-author] could access the data, because he was under your supervision and only you and he could access the data.*

BP: *He had access to the data only at my house with me present.*

CM-B: *I'm just still not sure how it would be possible for him to have the data if he only was able to access it under your supervision at your house in this computer?*

BP: *I don't know.*

CM-B: *So, my understanding is that [student] still has the data set and it's not clear with whom he's sharing it or what websites the data might be stored on.*

BP: *I agree with you. I'm responsible for that, but I don't know that he still has the data.....he's sort of gone a little bit rogue and I suspect there's no way he would talk to any CSU people.*

CM-A: *You describe [student co-author] as sort of going rogue here lately, can you just explain a little bit about what you mean?*

BP: *I suspect he's gonna try to publish the data, even though the NIH says don't.*

CM-A: *CSU is still trying to get confirmation from [student co-author] that he destroyed his copy of the data.*

BP: *Yeah, he won't do that. His take is he wants to go through the NIH and appeal further and not through CSU.*

It is important to note here for context, that based on your own testimony this was not just any student with whom you connected, but one whose CSU student status was arranged by you specifically for purposes of conducting this research. Specifically, you write in your rebuttal statement: "...To be specific, [student co-author] was a CSU alumnus who was taking post-bac independent study classes with me and the research papers under discussion were his class projects". CSU records show that [student co-author] never graduated with a degree from CSU. He earned a Bachelor's degree at another university before enrolling at CSU as a non-degree Psychology graduate student in the 2001 – 2002 academic year. Between 2005 and 2008, [student co-author] was enrolled at CSU as a Post-Baccalaureate student pursuing a B. S. in Biology. Most recently, he enrolled as a non-degree student in BUS 293, an independent study course under your supervision, for 1 credit each semester for five semesters between Spring 2019 and Spring 2021.

Further, you acknowledge that you and [student co-author] also have a "50/50 custodianship" role in the Human Phenome Diversity Foundation (HPDF), a non-profit organization that you presumably founded. In addition to acknowledging that HPDF funds were used to purchase the home computer on which you and [student co-author] conducted your research, in your rebuttal you stated the following:

I act as one of two stewards over the HPDF fund. I do not own it. Thus, when the Fund receives donations, I do not personally receive them. I have, though, used a fraction of the funds to support my research, but I'm not aware of a specific CSU policy against

this.....The Foundations' funds were mostly used to fund [student co-author's] educational expenses and in-class/out-of-class research expenses (laptop, Uber rides, CSU classes, attendance at a research conference, research meetings, etc).....the monies were also used to fund other researchers on related topics, as decided by [student co-author] and I (albeit, mostly by [student co-author]).

In your testimony you stated that *"I don't regret HPDF. I think it's fine. I don't think it's linked to CSU at all. But granted, [committee member] makes a good point about the computer and the Uber rides, but there is nothing explicitly linking my 501c3 to Cleveland State"*.

I believe any reasonable professor would realize that your conflation of your position as a tenured full professor at CSU with your role as a "custodian" of a non-profit organization whose funds supported your research projects as well as Uber rides for your student (and co 501c3 custodian) to your home constituted a real or perceived violation of our CSU Conflict of Interest Policy and should, at a minimum, have been disclosed for additional review.

You were the supervising professor for this student's independent study and you co-led a 501c3 together that funded a personal computer for you and materials, transportation and conferences for the student as you worked together on a research project for which you received permission to use a controlled access NIH dataset based on your status as a tenured full professor at Cleveland State University. You—and not the student co-author-- were the PI and responsible party on this research project, and you were the scholar who wrote this to Teri Kocevar in our research office:

I will be the only one who has access to these data, they will be stored on my CSU computer, which is password and firewall protected.

We know now that this statement did not reflect your ultimate actions. Your subsequent decisions led to your failure to protect a controlled access dataset that included information about a most vulnerable population: children. This failure led to you receiving the most severe penalty and longest data access ban that the NIH has ever issued.

You have not demonstrated concern or acknowledged full responsibility for your actions or the actions of a student who was under your direct supervision and receiving credit for an independent study with you.

Disciplinary Decision

The CSU-AAUP Collective Bargaining Agreement stipulates that... *"If the Chief Academic Officer of the University believes that the conduct of a faculty member is sufficient to justify sanction or dismissal, then the Chief Academic Officer may bring charges against a faculty member. The Chief Academic Officer shall initiate the procedure by informing the faculty member and the CSU-AAUP that charges have been brought. Sanction or dismissal of a faculty member may occur for just cause"* (Article 8. 1).

The CSU-AAUP Collective Bargaining Agreement Article 8 identifies 6 just cause areas that may lead to “Sanction or dismissal of a faculty member”. Your actions are implicated in four of the six causes listed (in bold), based on the facts established in the committee report:

- (1) incompetence or dishonesty in teaching or scholarship;**
- (2) neglect of duty;**
- (3) personal conduct which substantially impairs the individual's fulfillment of his/her institutional responsibilities;**
- (4) interfering with the normal operations of the University;**
- (5) fraudulent credentials; or
- (6) conviction of a crime involving moral turpitude or conviction of a crime of violence as defined in Section 2901.01 (9) of the Ohio Revised Code.

The CSU-AAUP Collective Bargaining Agreement states

In determining sanction or dismissal, the Chief Academic Officer shall take into consideration that principle of progressive discipline and the proportionality of the sanction or dismissal to the nature and impact of the offense. However, with respect to instances of misconduct that are of such a serious nature as to require immediate action, the University reserves the right, consistent with the requirements of just cause and the procedures outlines in this Agreement, to implement a suspension of other sanction without first administering a lesser sanction.(Article 8 I B (5)).

Given the seriousness of this research misconduct case and the fact that the harm extends beyond your personal reputation to taint the reputation of CSU as a whole, I find the offense warrants the most serious sanction be administered and that any lesser sanction would be disproportionate to the gravity of your conduct. Based on my review of the all the evidence provided, including your own testimony, I am hereby notifying you that I find your misconduct warrants dismissal from the University.

Article 8 in the CSU-AAUP CBA defines the process for sanction and dismissal. Specifically, Article 8.2 of the CBA requires the convening of an ad hoc committee. The ad hoc committee will be “comprised of three members of the bargaining unit and three members of the academic administration with tenured faculty status appointed jointly by the President of the CSU-AAUP and the University’s Chief Academic Officer.” The committee shall convene a hearing within ten days of the issuance of this letter unless the parties agree to a later date. At the hearing, I or my designee will present the basis for the proposed discipline. You will have an opportunity to respond to the charges that are the basis for the proposed disciplinary action. The CSU-AAUP has a right to attend and participate in the ad hoc committee hearing. Following the ad hoc committee hearing, committee has 15 working days to issue their recommendation. In accordance with Article 8.3 of the CBA, if upon receiving the advice of the ad hoc committee, I decide to implement disciplinary action, I will do so not later than ten days from receipt of the recommendation of the ad hoc committee.

I have attached here a copy of Article 8 of the Collective Bargaining Agreement and have notified the CSU-AAUP of my decision.

Sincerely,



Laura Bloomberg, Ph.D.

Provost and Senior Vice President for Academic Affairs

CC:

Kenneth Kahn, Dean, Monte Ahuja College of Business
Timothy DeGroot, Chair, Department of Management
Donald Allensworth-Davies, President, CSU -AAUP
Meredith Bond, Interim Vice President for Research and Innovation
Benjamin Ward, Research Integrity Officer, Office of Research
Sonali Wilson, General Counsel, Office of General Counsel

Attachment: AAUP-CSU Collective Bargaining Agreement: Article 8-Sanction and Dismissal

ARTICLE 8
SANCTION AND DISMISSAL

8.1 SANCTION AND DISMISSAL PROCEDURES. If the Chief Academic Officer of the University believes that the conduct of a faculty member is sufficient to justify sanction or dismissal, then the Chief Academic Officer may bring charges against a faculty member.

A The Chief Academic Officer shall initiate the procedure by informing the faculty member and the CSU-AAUP that charges have been brought.

B Sanction or dismissal of a faculty member may occur for just cause, including, but not limited to:

- (1) incompetence or dishonesty in teaching or scholarship;
- (2) neglect of duty;
- (3) personal conduct which substantially impairs the individual's fulfillment of his/her institutional responsibilities, including, but not limited to, drug or alcohol abuse, trafficking in illegal drugs, sexual, ethnic, racial or religious harassment;
- (4) interfering with the normal operations of the University;
- (5) fraudulent credentials; or
- (6) conviction of a crime involving moral turpitude or conviction of a crime of violence as defined in Section 2901.01 (9) of the Ohio Revised Code.

In determining an appropriate sanction or dismissal, the Chief Academic Officer of the University shall take into consideration the principle of progressive discipline and the proportionality of the sanction or dismissal to the nature and impact of the offense. However, with respect to instances of misconduct that are of such a serious nature as to require immediate action, the University reserves the right, consistent with the requirements of just cause and the procedures outlined in this Agreement, to implement a suspension or other sanction without first administering a lesser sanction.

C At any time prior to the final resolution of the matter, the Chief Academic Officer may temporarily relieve an accused faculty member of all academic responsibilities if the Chief Academic Officer deems this action to be necessary in any emergency to prevent immediate harm to the faculty member or others at the University. Before suspending a faculty member, the Chief Academic Officer shall consult with an ad hoc committee comprised of three (3) members of the bargaining unit and three (3) members of the academic administration with tenured faculty status appointed jointly by the President of the CSU-AAUP and the University's Chief Academic Officer ("ad hoc committee") and upon reaching a decision shall communicate in writing with the ad hoc committee and the CSU-AAUP. The accused faculty member shall suffer no loss of pay or benefits during such a period of temporary suspension.

- 8.2 Prior to dismissal or any sanction involving suspension, the Provost shall notify the faculty member and the CSU-AAUP in writing. Within ten (10) days of the written notification of dismissal or suspension, or such later date as agreed by the parties, the ad hoc committee shall convene a hearing at which the Provost, or designee, shall present the basis for the dismissal or suspension. The faculty member shall be present at the ad hoc committee hearing and shall have an opportunity to respond to the charges which are the basis for the proposed dismissal or suspension. The CSU-AAUP has the right to attend and participate in the ad hoc committee hearing. The ad hoc committee shall issue its recommendation not later than fifteen (15) University working days from the close of the hearing.
- 8.3 If, upon receiving the advice of the ad hoc committee, the Provost or designee decides to implement a dismissal or suspension, he/she shall do so not later than ten (10) University working days from receipt of the recommendation of the ad hoc committee as set forth in Article 8.2 above.
- 8.4 Sanctions, other than dismissal and suspensions, under this Article may be appealed to the Chief Academic Officer. Some examples of such sanctions may include, but are not limited to, letters of reprimand and dismissal from graduate faculty status before the expiration of a term. Dismissals and suspensions may be appealed by the CSU-AAUP directly to the President of the University not later than fifteen (15) University working days from the effective date of dismissal or suspension. Grievances of dismissals and suspensions shall be appealed directly to Level IV of the grievance procedure set forth in this Agreement not later than fifteen (15) University working days from the effective date of the dismissal or sanction involving suspension.
- 8.5 If dismissal or sanction proceedings are brought on the basis of an allegation of sexual harassment or discrimination of a student involving a bargaining unit member, the complainant will receive notice of hearings and outcomes at the same time as the respondent receives such notices, and the complainant may attend hearings with one support person. The complainant will have equivalent rights to appeal to the Chief Academic Officer as the respondent, including to appeal if he or she believes sanctions are too light. Final sanctions may be altered as a result of such appeal.
- 8.6 If dismissal or sanction proceedings are brought on the basis of an allegation of sexual violence that occurs on or near campus involving a bargaining unit member as either a complainant or a respondent, the complainant will receive notice of hearings and outcomes at the same time as the respondent receives such notices, and the complainant may attend hearings with one support person. The complainant will have equivalent rights to appeal to the Chief Academic Officer as the respondent, including to appeal if he or she believes sanctions are too light. Final sanctions may be altered as a result of such appeal.